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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

IN THE MATTER OF	)	
	)	
IMPLEMENTATION OF SECTIONS OF THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992	)))	MM Docket No. 92-266

REPLY COMMENTS OF USA NETWORKS

In these reply comments, USA Networks focuses solely upon the reasons why the Commission should adopt a mechanism permitting the automatic pass-through of changes in direct program costs of cable networks as a part of its rules governing the regulation of basic tier subscriber rates. The record shows widespread agreement that the Commission's overriding goal should be to assure the availability and growth of a broad and diverse choice of programming in the basic tier. The only effective means of achieving this goal in a regulated environment is through the adoption of a pass-through mechanism of the type that we and other commenting parties have advanced.[1/]

1/ We do not find it necessary to comment further on the other issues raised in our initial comments in this docket. The commenting parties are virtually unanimous in their view that benchmarking cannot be based upon a simple per channel basis. It is imperative that the Commission adopt a more sophisticated measurement of initial rates which reflects the number and quality of program sources in the basic tier. See, e.g., Comments of Encore Media Corporation at 14-15. There is also recognition that the Commission should not follow the same regulatory approach to rate regulation of upper tiers that it has proposed for regulation of basic tier rates because a formulaic approach in this context

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The common theme running throughout the voluminous comments filed in this docket is that, in regulating rates for the basic tier, the Commission must not disrupt or limit the quality, originality and choice of program service which basic cable subscribers now enjoy. Either directly or by implication, virtually all parties have recognized that Congress intended the adoption of regulations designed to assure that cable networks are "fairly compensated for the service they provide to cable subscribers and to encourage cable systems to carry such services in the basic tier." House Report at 82.

Even the most vociferous advocates of rate regulation recognize that a regulatory regime that focuses solely upon the cost or price of basic tier service and ignores other public interest goals will harm not just the cable industry and cable programmers, but the consumer as well. In its comments, the Consumer Federation of America acknowledges that "the general problem of a global formulaic approach [to rate regulation] is reduction of quality"; and it urges the Commission to be "alert" to "degradation of service" in the development of its rules governing rate regulation. Comments of Consumer Federation of America ("CFA") at 97-98. No one, least of all the consumer, would benefit from a regulatory regime under which consumers either pay dramatically more for the myriad of choices now available to them

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1/(...continued)
consider in evaluating the "unreasonableness" of upper tier rates. See, e.g., Comments of National Cable Television Association ("NCTA") at 56; Comments of NASHOBA Limited Partners at 95.

or receive a lot less programming, both in quality and quantity, for what they are now paying. Yet, that is exactly what will happen -- unless the Commission adopts a rule which provides cable operators with the incentive to carry a broad array of program choices in the basic tier, assures cable networks with access to the broadest possible audience and affords programmers the opportunity to be fairly compensated for the value of the service they provide. See, e.g., Comments of Arts and Entertainment Network at 7-10; Comments of Lifetime Television at 10.

Some franchise authorities have proposed expanding the scope of local rate regulation by redefining the tiers of service deemed to be "basic." See, e.g., Comments of Attorney General, State of Connecticut at 2-3. Such an approach will compel the very restructuring of basic cable service as we now know it. With reduced distribution, the basic cable services will have few alternatives other than to reduce the quality of their programming and/or raise the price of their service. These ends are precisely what consumer interest groups seek to avoid. The more pervasive the regulatory system, the more likely it is that consumers will be denied access to a choice of high quality, innovative programming from competitive sources in the lowest priced tiers.[2/] As Congress itself has recognized, the experience of the last decade confirms that in a market-driven environment, "the diversity and

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2/ We note that the CFA has suggested that the Commission should adopt a "programming quality index adjustment." See CFA Comments at 98. While we agree that program quality is an important consideration, we believe that the CFA proposal fails on any number of bases, not the least of which is that it may preclude the creation of new and innovative new programming services.

quality of cable programming networks have improved and increased." House Report at 79. Not one of the commenting parties argues that the basic rate increases arising from the introduction and enhancement of cable networks is contrary to the public interest.

Accordingly, in order to preserve program diversity and quality in the basic tier in a rate regulated environment, the Commission must adopt a rule which permits changes in the per subscriber fees paid by cable operators for the carriage of basic cable networks to be passed through without prior regulatory review. This mechanism provides cable operators with the appropriate incentive to continue to carry high quality programming from diverse sources in the lowest priced tier and to add new services to that tier. At the same time, the pass-through mechanism provides cable networks with the ability to negotiate with cable operators for access to the broadest possible audience and for the per subscriber revenues they need to continue to provide better quality programming and more diverse, competitive program offerings. The ultimate beneficiary is the consumer.

The adoption of such a pass-through affirmatively serves the public interest. Basic subscriber rate increases resulting from the pass-through mechanism will not be of the type that led Congress to reimpose rate regulation. As the NCTA points out in its comments, there are certain kinds of costs that provide "no excess or monopoly profits" to cable systems. NCTA Comments at 43. The NCTA states that retransmission consent fees fall into this category. NCTA Comments at 44. So do per subscriber fees paid to cable networks. The pass-through of per subscriber fees will not profit the cable operator and will not lead to unconstrained rate increases. The pass-through mechanism only assures that "consumer interests" in access to high quality and diverse program choices as well as reasonable rates "are protected" to the fullest possible extent. P.L. 102-385 § 2(b). It should be adopted.

Respectfully submitted

Stephen A Brenner

Stephen A. Brenner
Executive Vice President
Business Affairs, Operations
and General Counsel

Of Counsel:

Ian D. Volner, Esq.
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

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